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PATENT & TRADEMARK OFFICE

Docket No.: 06011/38140
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Puterbaugh *et al.*

Application No.: 10/678,611

Confirmation No.: 9430

Filed: October 3, 2003

Art Unit: 2834

For: ELECTRIC MOTORS FOR WASHDOWN, FOOD PROCESSING AND CHEMICAL APPLICATIONS

Examiner: Preston, Erik D.

AFFIDAVIT OF GARY M. WILSON UNDER 37 CFR §1.132

I, Gary M. Wilson, declare as follows:

1. I am the HydroDuty Business Unit Manager and the National Sales Manager EMPD[1] of Franklin Electric Co., Inc. (Franklin), the assignee of the above patent application. Franklin manufactures and sells well water pumping systems, fuel pumping systems, electric motors, pumps, drives and controls.

2. The purpose of this affidavit is to submit evidence of secondary considerations, including commercial success, long-felt need and copying by others, in order to rebut obviousness rejections in an Office action dated August 24, 2005.

3. One of my responsibilities as the HydroDuty Business Unit Manager for Franklin is to sell Franklin's line of what are commercially referred to as "washdown motors."

4. As their name suggests, washdown motors are motors that are intended to be regularly washed down, typically by high pressure hot water, steam and/or chemical solutions.

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[1] Engineered Motor Products Division

5. Although some Franklin motors had historically been purchased for washdown applications, Franklin did not historically market motors for this purpose. The market leader of washdown motors was, and remains, Baldor Electric Company. Other significant manufacturers include Leeson Electric Corporation, Emerson Electric Co., Reliance Electric Company, Sterling Electric, Inc., WEG and Toshiba.

6. Recognizing a growing meat and poultry processing segment of the food and beverage processing industry in the United States, and recognizing an unfilled need for durable motors in this segment, Franklin decided in 2002 to design, manufacture and sell motors specifically designed for washdown applications for the meat and poultry segment of the food and beverage industry. As a result of this decision, the inventors named in this application analyzed the motor needs of the meat and poultry processing segment and designed a motor, described and claimed in this application, to satisfy those needs. Franklin calls this motor the HydroDuty® motor.

7. Motors used in the meat and poultry segment of the food and beverage industry typically require frequent cleaning with high pressure hot water, steam and/or chemical solutions to meet stringent USDA sanitation requirements. It is my experience that motors in these applications would fail quite early. On average, I estimate they would fail every four months. Often they would fail much sooner. Such motor failures can cause unscheduled maintenance, which can be quite expensive to the end user. This is especially true if the motor failure results in a shut-down of the processing line. In my opinion, for a long time there has been a need for a motor having a longer life in these applications.

8. It is my opinion that the HydroDuty motor has satisfied the need for a washdown motor having a long life. As described on Exhibit A, Franklin designed and built a Chemical Wash Life Station which simulates a processing plant's washdown environment. The test procedure is described on page two. The chart on page one illustrates how the best HydroDuty motor tested performed compared to the best motor tested of Franklin's primary competitors. The HydroDuty motor lasted over 10 times longer than its closest competitor.

9. I estimate the US food and beverage processing industry annually purchases between 300,000 and 350,000 washdown duty motors, five horsepower and under.

I estimate the meat and poultry processing segment of the food and beverage processing industry purchases between 200,000 and 250,000, five horsepower and under washdown duty motors, annually.

10. Franklin commercially introduced the HydroDuty motor in January of 2004. That year, Franklin sold 1000 HydroDuty motors. Based upon sales to date in 2005, as well as sales projections for the remainder of this year, I estimate that Franklin will sell over 3000 HydroDuty motors in 2005, over three times the sales in 2004. I estimate that Franklin will sell approximately 5000-6000 HydroDuty motors in 2006, representing possibly a further, almost doubling of sales.

11. Franklin now has HydroDuty motors installed at 14 of the top 20 meat and poultry processors in the United States, including Tyson Foods, Cargill Meat Solutions, Smithfield Foods, Sara Lee, Pilgrim's Pride, ConAgra, Swift and Co., Perdue Farms, and others.

12. In an address to his company's engineering and maintenance staff, a Strategic Sourcing Manager for a major U.S. based meat and poultry processor stated that he had tried for four years to get his company's motor suppliers to design and build a motor that would last and that they had failed to do this. He further stated that then Franklin came along with their HydroDuty motor and that he now believed he had a motor that would really last in his company's plants.

13. This rapid increase in sales of HydroDuty motors is significant for several reasons. Franklin typically sells its HydroDuty motors through independent distributors. When it introduced the HydroDuty motor, Franklin did not have a relationship with any of these distributors. So not only was Franklin launching a new product, it had to develop relationships with distributors to sell the new product. These independent distributors typically were also selling the motors of other, established washdown motor manufacturers. Thus the progressively increasing sales of Franklin's HydroDuty motors has come at the expense of sales of washdown motors from the other established washdown motor manufacturers. And because of the long life of the HydroDuty motors, the distributor will sell fewer motors. Most importantly, the progressively increasing sales have been

obtained while also permitting Franklin to achieve a significant sales price premium to the distributors. Conventional washdown motors typically have either a stainless steel casing or a painted steel casing. Franklin's current HydroDuty motor is sold only with a stainless steel casing. Franklin sells its smaller HydroDuty motors at a 50% price premium over the price of market leader Baldor's stainless steel washdown motors. Franklin sells its larger HydroDuty motors at a 150% price premium over the price of Baldor's comparably sized stainless steel washdown motors. These price premiums are even greater when compared to Baldor's washdown motors with painted steel casings. There the premiums are over 200% and 300%, respectively. The premiums are even greater when compared to less expensive, commercially available, foreign imports.

14. It is my opinion that people are paying these price premiums because of the merits of the invention and not because of other economic and commercial factors unrelated to the technical quality of the patented subject matter.

15. While warranties were provided in certain, limited instances, because of the failure rate of conventional washdown motors, washdown motors were typically not sold with across the board warranties against water damage failures. However in view of the durability of the HydroDuty motors, Franklin has been able to offer a one-year warranty against, among other things, water damage failures. Conservatively less than one percent of the HydroDuty motors sold to date have been returned due to water damage failures.

16. It is my opinion that the HydroDuty motor has greatly satisfied a long-felt need for a durable motor for washdown applications.

17. Accordingly it is my opinion that Franklin's HydroDuty motor has been commercially successful. It is further my opinion that the commercial success of Franklin's HydroDuty motor is a direct result of the motor's durability, and that the durability is a direct result of the combination of: (1) an encapsulated stator core which substantially fills any voids between the stator core and the motor casing, thereby sealing the stator core and better transferring heat from the windings; (2) a shaft seal and bearing protection system which substantially prevents water or other cleaning solutions from entering the motor housing; and (3) a breather plug which allows air to pass to accommodate pressure changes in

the motor housing, expelling vapor while preventing liquids from entering the motor housing, thereby eliminating a need for a drain plug as a source for entry of liquid.

18. At a Tyson Engineering Conference in May of 2005, I saw a washdown motor being sold by Baldor which I believe is effectively a copy of the claimed features of the HydroDuty motor. The motor was sectioned and I could see the inside structure. The Baldor motor has a coating material which substantially covers the stator assembly, physically contacts the interior of the motor casing, and substantially fills any gap between the stator core and the inner surface of the motor casing. I believe that the coating material was thermally conductive, thereby thermally connecting the stator assembly to the motor casing. The Baldor motor also included a bearing assembly including a bearing, a shaft lip seal, a one way check seal and a slinger disposed on an outer face of the bearing assembly. The slinger substantially covered the check seal. The Baldor motor also included a breather plug constructed from a breathable membrane. I have attached as Exhibit B a copy of literature describing this Baldor motor, which I obtained at the Conference.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true. I further declare that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful and false statements may jeopardize the validity of the subject patent application or any patent issued thereon.

Gary M. Wilson

Gary M. Wilson

6/21/05

Date